

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

UNITED STATES OF AMERICA :
:
v. : File No. 1:07-CR-03-01
:
CRAIG BETHEA :
:

RULING ON DEFENDANT'S MOTION TO SUPPRESS
(Paper 56)

The Court previously determined the electronic monitoring conducted by state law enforcement officers between January 20 and 25, 2006 did not run afoul of the Federal Wiretap Statute, 18 U.S.C. § 2510, et seq. (Paper 37 at 7-8). Thereafter, the Court denied Defendant's challenge to the constitutionality of the electronic monitoring under Vermont state law because state law does not apply in this federal prosecution. (Paper 51).

Defendant's newest motion, submitted pro se,¹ seemingly puts a slightly different gloss on his prior motions by arguing the January 20, 2006 state-issued "wire warrant" is invalid under the Fourth Amendment of the United States Constitution and failed to comply with certain state law requirements.

¹To be clear, Defendant is represented by counsel. This pro se motion is before the Court by virtue of the Court having granted the "Motion to Accept Defendant's Attached Pro-Se Filing." (Paper 55).

Under governing federal law, however, warrantless surveillance is lawful if one of the participants in the monitored conversations consents. See, e.g., United States v. Apostolopoulos, 2005 WL 2482525, *1 (S.D.N.Y. Oct. 6, 2005) (where one party to a wiretap consents to interception, "there can be no objection to the introduction of evidence obtained from the recording at trial"). The Court has already found the CI voluntarily and freely consented on January 10, 2006 to having his/her conversations monitored and recorded. The January 2006 surveillance, therefore, did not require a warrant, rendering meaningless the vitality of the state-issued wire warrant.

Accordingly, Defendant's Motion to Suppress (Paper 56) is DENIED.

SO ORDERED.

Dated at Brattleboro, in the District of Vermont, this 8th day of August, 2008.

/s/ J. Garvan Murtha
J. Garvan Murtha
United States District Judge